



[BILLING CODE 3190-W2-P]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS316]

WTO Dispute Settlement Proceeding Regarding European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft – Recourse by the United States to Article 21.5 of the DSU

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (“USTR”) is providing notice that on March 30, 2012, the United States requested establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* (“WTO Agreement”). That request may be found at www.wto.org contained in a document designated as WT/DS316/23. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before **[insert date that is thirty days after date of publication]** to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to www.regulations.gov, docket number USTR-2012-007. If you are unable to provide submissions to www.regulations.gov, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential

information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395-3640.

FOR FURTHER INFORMATION CONTACT: Willis S. Martyn, Associate General Counsel, or Frank J. Schweitzer, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508, (202) 395-3150.

SUPPLEMENTARY INFORMATION: Section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that it has requested a panel pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”). Once it is established, the panel will hold its meetings in Geneva, Switzerland, and could issue a report on its findings and recommendations as soon as three months after its establishment.

Major Issues Raised by the United States

On June 1, 2011, the Dispute Settlement Body (“DSB”) adopted its recommendations and rulings in the dispute *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft* (DS316) (“EC – Large Civil Aircraft”). The DSB ruled that the following are specific subsidies within the meaning of Articles 1 and 2 of the *Agreement on Subsidies and Countervailing Measures* (“SCM Agreement”) that caused adverse effects to U.S. interests within the meaning of Articles 5(c) and 6.3(a), (b), and (c) of that Agreement:

- grants of launch aid/member State financing (“LA/MSF”) by the European Union (“EU”) member state governments of France, Germany, Spain, and the United Kingdom to Airbus for the A300, A310, A320, A330, A340, A330-200, A340-500/600, and A380;
- the provision of the Mühlenberger Loch site and the lengthened Bremen Airport Runway;
- grants by authorities in Germany and Spain for the construction of manufacturing and assembly facilities in Nordenham, Germany, and Sevilla, La Rinconada, Toledo, Puerto de Santa Maria, and Puerto Real, Spain, and by the government of Andalusia and Castilla-La Mancha to Airbus in Puerto Real, Sevilla, and Illescas (Toledo);
- the 1989 acquisition by Kreditanstalt für Wiederaufbau (“KfW”) of a 20 percent equity interest in Deutsche Airbus and the 1992 transfer by KfW of its 100 percent equity interest in Deutsche Airbus to Messerschmitt-Bölkow-Blohm GmbH (“MBB”); and
- the 1987, 1988, 1992, and 1994 equity infusions to Aérospatiale.

The DSB recommended that the EU and certain member States bring their WTO-inconsistent measures into compliance with their obligations under the SCM Agreement.

On December 1, 2011, the EU transmitted a document (“EU Notification”) to the United States and the DSB claiming that the EU had brought its measures fully into conformity with the DSB recommendations and rulings. The EU notification included a list of 36 “appropriate steps” taken by the EU to bring its measures into conformity with the EU’s WTO obligations. Upon review of the notification, the United States did not agree with the EU’s position that the EU had fully complied with the DSB recommendations and rulings. Accordingly, the United States requested consultations on December 9, 2011. The United States and the EU held consultations on January 13, 2012. The consultations failed to resolve the dispute.

Article 7.8 of the SCM Agreement provides that a Member found to maintain measures inconsistent with Article 5(c) and 6.3 of the SCM Agreement “shall take appropriate steps to remove the adverse effects or shall withdraw the subsidy.” The United States considers that the EU has done neither of these with regard to the measures identified above. As there is “disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings” of the DSB, the United States is seeking recourse to Article 21.5 of the DSU.

The United States has requested that the Article 21.5 panel consider the following matters. With respect to the measures the EU has identified in the EU Notification as the measures taken to comply with the recommendations and rulings of the DSB for purposes of Article 21.5 of the DSU, the United States considers that (i) these measures are insufficient to remove the adverse effects or withdraw the subsidies, and (ii) certain of these measures taken to comply introduce new inconsistencies with the SCM Agreement. In addition, French, German, Spanish, and UK LA/MSF for the A350XWB (i) are measures closely related to the measures the EU has identified as taken to comply and to the EU measures the DSB found to be inconsistent with the SCM Agreement and (ii) replace or continue the LA/MSF for twin-aisle aircraft covered by the recommendations and rulings of the DSB. The United States considers these LA/MSF measures for the A350XWB to be inconsistent with the SCM Agreement.

Additional details are provided in the panel request, which may be found at www.wto.org contained in a document designated as WT/DS316/23.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to www.regulations.gov docket number USTR-2012-0007. If you are unable to provide submissions by www.regulations.gov, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

To submit comments via www.regulations.gov, enter docket number USTR-2012-0007 on the home page and click “search”. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting “Notice” under “Document Type” on the left side of the search-results page, and click on the link entitled “Submit a Comment.” (For further information on using the www.regulations.gov website, please consult the resources provided on the website by clicking on “How to Use This Site” on the left side of the home page.)

The www.regulations.gov site provides the option of providing comments by filling in a “Type Comments” field, or by attaching a document using an “upload file” field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type “See attached” in the “Type Comments” field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business

information must be clearly designated as such and the submission must be marked “BUSINESS CONFIDENTIAL” at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395-3640. A non-confidential summary of the confidential information must be submitted to www.regulations.gov. The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. § 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter –

- (1) Must clearly so designate the information or advice;
- (2) Must clearly mark the material as “SUBMITTED IN CONFIDENCE” at the top and bottom of the cover page and each succeeding page; and
- (3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to www.regulations.gov. The non-confidential summary will be placed in the docket and open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. ' 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public at www.regulations.gov, docket number USTR 2012-0007. The public file will include non-

confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's website at www.ustr.gov, and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the website of the World Trade Organization, www.wto.org. Comments open to public inspection may be viewed on the www.regulations.gov website.

Bradford Ward,
Acting Assistant United States Trade Representative
for Monitoring and Enforcement

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